

**COMPLAINT INVESTIGATION SUMMARY**

COMPLAINT NUMBER:	1889.02
COMPLAINT INVESTIGATOR:	Connie Rahe
DATE OF COMPLAINT:	March 15, 2002
DATE OF REPORT:	April 12, 2002
REQUEST FOR RECONSIDERATION:	no
DATE OF CLOSURE:	July 19, 2002

**COMPLAINT ISSUES:**

Whether the MSD of Southwest Allen County and the Smith-Green-West Allen Special Education Cooperative violated:

511 IAC 7-27-7(a) by failing to implement the student's individualized education program (IEP) as written, specifically:

- a. failing to provide identified modifications/supports;
- b. failing to provide special education consultation;
- c. failing to provide daily assistance with materials needed for homework;
- d. failing to assess the student for the ALPHA program; and
- e. failing to provide the opportunity for the student to utilize the resource room.

511 IAC 7-27-7(b) and 511 IAC 7-17-72 by failing to ensure the student's teacher of record (TOR) informed each of the student's teachers and service providers of his or her specific responsibilities related to implementing the student's IEP.

511 IAC 7-27-5(d) by changing the student's placement to homebound instruction without the parent's consent.

511 IAC 7-29-1(l) by failing to comply with the procedures required by IC 20-8.1-5.1-12(b) and (d) when suspending a student.

511 IAC 7-18-2 by failing to provide a student with a disability with a free appropriate public education by refusing to allow the student to return to school when the student's period of suspension had expired.

**FINDINGS OF FACT:**

1. The student is eleven years old, is currently enrolled in fifth grade, and has been determined eligible for special education and related services under the category of emotional disability.
2. The current IEP, dated October 23, 2001, states that the student has a "functional behavior plan" (behavior plan) in place and that it is attached to the IEP. The copy of the current IEP submitted by the school did not include an attached behavior plan. However, the copy of the same IEP submitted by the parent included a copy of the behavior plan developed by another case conference committee (CCC) and included as part of the IEP when the student was enrolled in a neighboring school district. That IEP and behavior plan were current when the student transferred to the current school. Although the

school asserted that the behavior plan developed by the student's previous school is not incorporated as part of the October 23, 2001, IEP, the school did not submit any documentation of a behavior plan that it considered to be attached, as indicated on the October 23, 2001, IEP.

3. Attached to the behavior plan is a checklist entitled "Modifications/Supports" that are to be provided to the student, specifically:
  - extended time requirements;
  - allow breaks;
  - present demonstrations;
  - utilize manipulatives;
  - highlighted texts/study guides;
  - access to computer to write assignments;
  - give directions in small, distinct steps (written/picture/oral);
  - shorten assignments;
  - reduce paper and pencil tasks;
  - give extra cues or prompts;
  - allow the student to record or type assignments;
  - request parent reinforcement;
  - test adaptations, including short answer, multiple choice, shorten lengthy questions;
  - social interaction supports, including peer advocacy, structured activities to create opportunities for social interaction,
  - focus on social process rather than activity/end product, teach friendship skills/sharing/negotiation, and teach social communication skills;
  - motivation and reinforcement strategies : verbal, non-verbal, positive, and concrete reinforcement; reinforcement initiation; offer choice; and use strengths/interests often.

The behavior plan also identifies interventions to be utilized, including assistance with homework and assistance with materials needed for homework. This assistance is to be provided at the end of each day through peer and resource room staff support.

4. The parent asserts that the identified modifications and supports are not being provided to the student. The school reports that the behavior plan is not part of the October 23, 2001, IEP; therefore, the identified modifications and supports have not been provided to the student.
5. The IEP states that the student is to receive special education services at the level of consultation. In the March 26, 2002, letter to the Division, the director states that the TOR was to provide consultation to the teacher of service (TOS) and the general education teachers. The parent reported several of the general education teachers did not know the student is to receive special education and related services. The director was asked to send documentation to demonstrate that the TOR had consulted with the student's general education teachers regarding the student's IEP, but none was provided.
6. The student has classes with several teachers throughout the school day. The parent asserts that daily teacher assistance for monitoring homework needs were not provided consistently, and the director concurred in her letter of March 26, 2002.
7. The CCC Summary/IEP dated October 23, 2001, included a signed referral for evaluation for the ALPHA program, but testing has not yet been initiated.
8. The parent asserts that the student did not receive assistance when he went to the resource room at the end of the day for assistance with materials for homework. Notes between the parent and school written in the homework notebook indicate he was not getting that help when he went to the resource

room.

9. The parent contends that several of the student's general education teachers did not know he was to receive special education services or accommodations in their classrooms. The school failed to comply with the request to provide documentation to demonstrate that the student's TOR informed each of the student's teachers and service providers of his or her specific responsibilities related to implementing the student's IEP.
10. The principal telephoned the student's stepfather on March 8, 2002, asking him to pick up the student because he had been suspended for three days. The parents requested a written statement from the principal on March 8, 12, and 18 regarding the March 8 suspension. Although the written notice of suspension is dated March 11, 2002, the envelope in which it was delivered to the Parent is postmarked March 19, 2002. The Parent received the notice on March 20, 2002. The notice describes the behavior for which the Student was suspended and that the Student was suspended on March 8. The notice does not state the duration of the suspension.
11. Before the CCC meeting on March 12, 2002, the School advised the parent that the Student would be placed on homebound services. The Case Conference Summary indicates the school proposed homebound services or a self-contained placement at another school. The Parent did not agree to any change of placement. Subsequent to the March 12 CCC meeting, the School continued to exclude the Student. The School communicated with the Parent about the Student's homework assignments and provided the Parent with those assignments, but the Student was provided no other services or instruction.
12. The school did not permit the student to return to school subsequent to the three-day suspension, nor did it formally suspend the Student for additional days beyond March 8-12. The student was allowed to return to school on March 21, 2002.

## CONCLUSIONS:

- 1a. Findings of Fact #2, #3, and #4 indicate that the Student was to be provided with a variety of modifications and supports pursuant to an attachment to the Student's current IEP. The School failed to provide the modifications and supports. Therefore, a violation of 511 IAC 7-27-7(a) is found with regard to the provision of identified modifications and supports.
- 1b. Finding of Fact #5 reflects that the School did not provide documentation to demonstrate that special education consultation had been provided in accordance with the Student's current IEP. In the absence of documentation to demonstrate compliance with this requirement of the IEP, a violation of 511 IAC 7-27-7(a) is found in this regard.
- 1c. Findings of Fact #3, #4, and #6 reflect that Student was to be provided assistance with homework and with homework materials and that the School acknowledges that this was not done on a consistent basis. Therefore, a violation of 511 IAC 7-27-7(a) is found with respect to the provision of homework assistance.
- 1d. Finding of Fact #7 indicates that, pursuant to the CCC Summary/IEP of October 23, 2001, the Student was to be tested for the ALPHA program. Although more than five months have elapsed since this decision was made, the School has not yet initiated the assessment. A violation of 511 IAC 7-27-7(a) is found with respect to the School's failure to conduct the assessment.

- 1e. Findings of Fact #3 and #8 indicate that the Student was to receive assistance with homework and with homework materials from resource room staff, but that this has not occurred on a consistent basis. Therefore, a violation of 511 IAC 7-27-7(a) is found in this regard.
2. Finding of Fact #9 establishes that the School failed to provide documentation to demonstrate that the Student's TOR provided information to each of the Student's teachers to ensure that each understood his or her responsibility in implementing the Student's IEP. Absent documentation to demonstrate compliance with this requirement, violations of 511 IAC 7-27-7(b) and 511 IAC 7-17-72 are found.
3. Findings of Fact #10, #11, and #12 reflect that the Student was suspended for March 8, 11, and 12, 2002. A CCC convened on March 12, and the School recommended the Student's placement be changed to homebound or a separate classroom. Although the Parent did not agree to a change of placement, the School continued to exclude the Student from School until March 21, effectively resulting in a change of placement without the parent's consent. Therefore, a violation of 511 IAC 7-27-5(d) is found.
4. Indiana Code §20.8.1-5.1-12(b) and (d) requires a principal to afford a suspended student the opportunity for a meeting prior to suspension and to provide the student's parent with a written statement describing the student's misconduct and the action taken. Finding of Fact #11 indicates that when the Student was suspended on March 8, 2002, the principal verbally notified the Parent of the suspension and stated the suspension was for three days. The principal did not send a written statement to the Parent until March 20, 2002, and the notice failed to indicate the duration of the suspension. The notice was insufficient. Because 511 IAC 7-29-1(l) requires compliance with I.C. § 20-8.1-5.1-12, a violation is found.
5. Findings of Fact #10, #11, and #12 indicate that the Student was suspended for three days beginning on March 8, 2002. The Student should have returned to School on March 13, 2002, after serving the period of suspension. The School did not allow the Student to return to School until March 21, 2002, nor did it formally suspend the Student for the additional 6 days. The School provided no instruction or other IEP required services to the Student between March 13 and 21, resulting in a denial of a free appropriate public education. Therefore, a violation of 511 IAC 7-18-2 is found.

**The Department of Education, Division of Exceptional Learners requires the following corrective action based on the Findings of Fact and Conclusions listed above.**

**CORRECTIVE ACTION:**

The MSD of Southwest Allen County and the Smith-Green-West Allen Special Education Cooperative shall:

1. reconvene the CCC to:
  - a. Review the behavior plan and modifications, supports, and interventions to ensure that the Student's needs are being met.
  - b. Determine the compensatory services to be provided to the Student as a result of the six-day interruption of services, the failure to implement identified modifications and supports, the lack of special education consultation, and the inconsistent provision of assistance with homework and homework materials. The CCC shall consider any adverse affects of not having provided the identified modifications and interventions, including any lack of academic or social skills progress and any negative impact on the Student's grades. and
  - c. Consider the results of the assessment for participation in the ALPHA program.

The CCC's consideration and determination regarding compensatory services and the results of the ALPHA assessment shall be fully documented in the CCC Summary/Report. A copy of the CCC Summary/IEP shall be submitted to the Division no later than May 17, 2002.

2. immediately assess the Student for participation in the ALPHA program and include the results of that assessment in the CCC convened in response to corrective #1.
3. send a written memorandum to all special education teachers regarding their responsibilities as a teacher of record as detailed in 511 IAC 7-17-72 and 511 IAC 7-27-7(b), with specific emphasis on the responsibility to inform a student's teachers and other service providers of his or her responsibility in implementing a student's IEP. A copy of the written memorandum and a list of individuals to whom the memorandum was sent shall be submitted to the Division no later than May 10, 2002.
4. send a written memorandum to all general education teachers reminding them of the responsibility to provide services in accordance with the student's IEP as it applies to that teacher's classroom. A copy of the written memorandum and a list of individuals to whom the memorandum was sent shall be submitted to the Division no later than May 10, 2002.
5. send a written memorandum to building administrators reminding them of the requirements for suspending and expelling students with disabilities, including the requirements of I.C. § 20-8.1-5.1-12 with regard to providing a written statement to the parent when a student has been suspended. A copy of the written memorandum and a list of individuals to whom the memorandum was sent shall be submitted to the Division no later than May 10, 2002.
6. send a written memorandum to building administrators and CCC chairpersons regarding the requirement of parental consent prior to changing a student's placement, specifically that a change of placement may not occur without the parent's written consent. A copy of the written memorandum and a list of individuals to whom the memorandum was sent shall be submitted to the Division no later than May 10, 2002.